

<sup>2</sup> The Board notes that, following the February 12, 2021 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id*

## **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On March 1, 2017 appellant, then a 52-year-old rural route carrier, filed an occupational disease claim (Form CA-2) alleging that he developed a bilateral hip condition due to factors of his federal employment, including walking, standing, twisting, turning, pushing, pulling, and climbing in and out of his long-life vehicle (LLV). He noted that he first became aware of his claimed condition and realized its relationship to his federal employment on January 16, 2017. Appellant stopped work on August 10, 2016. On the reverse side of the claim form, D.B., a customer service supervisor for the employing establishment, indicated that appellant had been working limited duty since July 3, 2014 due to a prior work-related injury.<sup>4</sup>

In a March 3, 2017 letter, the employing establishment controverted appellant's claim, alleging that he had submitted a false statement that contradicted actual events. It noted that appellant had not driven a postal vehicle in over two years since he began to work a limited-duty assignment that had no delivery duties. The employing establishment reported that appellant had not worked since August 10, 2016 under a separate claim and had no opportunity to aggravate this injury for over nine months. It attached a limited-duty job offer dated July 15, 2014.

In a March 16, 2017 development letter, OWCP advised appellant of the deficiencies of his claim. It requested additional factual and medical evidence, and provided a questionnaire for his completion. OWCP afforded appellant 30 days to respond.

In an April 3, 2017 response, appellant recounted that he performed his employment duties daily with the exception of climbing in and out of the postal vehicle, which he stopped performing on June 6, 2017 due to his current work restrictions under OWCP File No. xxxxxx667. He estimated that, beginning September 1989, he spent 5½ to 6½ hours walking and standing, 2 to 3 hours twisting, 2 or more hours turning, 30 to 60 minutes pushing, 30 or more minutes pulling, and 3 to 4 hours climbing in and out of postal vehicles. Appellant also clarified that he was claiming a new occupational disease claim that was not related to his previously accepted bilateral knee condition.

Appellant also submitted additional medical evidence. A January 17, 2017 right hip magnetic resonance imaging (MRI) scan demonstrated osteoarthritis and a complex tear of the superolateral labrum with an adjacent small-to-moderate-sized paralabral cyst. A left hip MRI scan report of even date also demonstrated a complex superolateral labral tear and moderate left hip effusion.

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<sup>3</sup> Docket No. 19-0543 (issued December 23, 2019).

<sup>4</sup> Appellant has filed two previous occupational disease claims. Under OWCP File No. xxxxxx064, OWCP accepted appellant's claim for bilateral femoral and ventral hernia in 2014. Under OWCP File No. xxxxxx667, it accepted his claim for bilateral knee sprains, bilateral tears of the lateral and medial meniscus, and bilateral patellar chondromalacia in 2016. The cases have not been administratively combined.

In a February 23, 2017 report, Dr. Edward Mittleman, a family physician, recounted that appellant had been delivering his regular route for over 20 years without any limitation, but had not performed his mail delivery duties since June 2014. He provided a detailed, chronological description of appellant's duties from when he arrived at the employing establishment until he completed his mail delivery route. Dr. Mittleman noted that appellant was continuously standing and repetitively bending, twisting, reaching, and grabbing mail, lifting up to 70 pounds, mounting and dismounting his LLV, and ascending and descending stairs on his delivery route. He reported that appellant had complained of sharp bilateral hip pain for approximately a year and a half that increased when walking, standing, twisting, turning, sitting upright while driving his LLV, and climbing in and out of his LLV while walking. On examination of appellant's bilateral hips Dr. Mittleman observed greater pain on the left, compared to the right, with lateral pressure and greater pain on the left, compared to the right, on passive rotation of the hips. He also provided range of motion findings.

Dr. Mittleman diagnosed left hip labral tear, right hip labral tear, and acceleration of left and right hip osteoarthritis. He indicated that appellant had also developed femoroacetabular impingement (FAI), which caused the ball and socket of appellant's right hip joint to not fit together perfectly. Dr. Mittleman explained how this joint allowed for movement forwards and backwards, side to side, and internal and external rotation, which appellant performed as a rural route carrier. He noted that a patient usually began to experience symptoms of his FAI when a labral tear event would occur. Dr. Mittleman reported:

"Once the labrum is torn, the protective effectiveness of the labrum to the articular cartilage is decreased, and articular cartilage damage occurs as it has occurred in [appellant's] hips. Over time, this breakdown of articular cartilage leads to hip arthritis because without the protection of the articular cartilage there is now bone rubbing against bone as has occurred in [appellant's] hips. Although the hip bones in [his] hips developed abnormally, it has been the repetitive weight-bearing forces sustained by [appellant's] hips when performing his duties as a rural route carrier for the USPS for 27 years."

Dr. Mittleman further described in detail how appellant's specific employment duties required him to be in a constant weight-bearing position and placed significant forces on his hips. He concluded that it was the "long-term repetitive pressure to Mr. Martin's hips that has accelerated the femoroacetabular impingement in both of his hips."

By decision dated May 11, 2017, OWCP denied appellant's occupational disease claim, finding that he had not established that his diagnosed medical conditions were causally related to the accepted factors of his federal employment.

Appellant continued to request reconsideration and submit medical evidence.

In letters dated June 12 and October 19, 2017, Dr. Mittleman noted his disagreement with OWCP's denial decision and reiterated his opinion that appellant's daily weight-bearing activities as a letter carrier accelerated his bilateral degenerative hip condition(s). He noted that, while appellant had an underlying FAI condition, appellant's employment duties also contributed to the development of his bilateral hip labral tears and bilateral hip osteoarthritis.

Appellant also submitted a March 7, 2017 report by Dr. Charles Herring, a Board-certified orthopedic surgeon, who discussed appellant's history of injury and employment history. On physical examination he observed that appellant ambulated with a slight bilateral antalgic gait. Dr. Herring reported that range of motion examination demonstrated limited flexion and external and internal rotation of both hips. He diagnosed bilateral hip osteoarthritis, bilateral hip labral tears, and bilateral FAI syndrome. Dr. Herring concluded that appellant's work activities, including frequent entering and exiting of the LLV, walking, stooping, and lifting, superimposed upon his existing FAI condition, caused labral tears and hastened the osteoarthritic changes within his hip joints.

By decisions dated September 19, 2017 and August 8, 2018, OWCP denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a).

Appellant filed an appeal to the Board. By decision dated December 23, 2019, the Board found that appellant had submitted pertinent and relevant new medical evidence not previously considered by OWCP. It set aside the August 8, 2018 OWCP decision and remanded the case for OWCP to conduct a merit review of appellant's claim.

Following the Board's decision, OWCP received an April 15, 2020 letter from Dr. Mittleman, who asserted that appellant's preexisting FAI condition did not negate contribution of appellant's work factors to his bilateral hip osteoarthritis and labral tears. He reiterated his opinion that appellant's job duties as a letter carrier caused permanent aggravation of his bilateral hip osteoarthritis. Dr. Mittleman provided a detailed list of appellant's job duties and noted that appellant had performed these duties for 20 years without restrictions and continued to work with restrictions after a bilateral knee injury and a hernia.

In a *de novo* decision dated May 14, 2020, OWCP denied appellant's occupational disease claim, finding that the medical evidence of record was insufficient to establish that his diagnosed medical conditions were causally related to the accepted factors of his federal employment.

On September 24, 2020 appellant requested reconsideration.

In an April 23, 2020 progress note, Dr. Mittleman recounted appellant's complaints of bilateral hip sensations of sharpness, shooting, stabbing, and aching. He provided examination findings and diagnosed aggravation of bilateral hip osteoarthritis and released appellant to modified-duty work.

In a letter dated July 6, 2020, Dr. Basimah Khulusi, Board-certified in physical medicine and rehabilitation, noted her disagreement with OWCP's denial decision. She explained that appellant was born with deformed hips, which made him more vulnerable to suffer more damage from wear and tear because the distribution of forces going through the femoral head into the acetabulum was abnormally distributed. Dr. Khulusi described how appellant suffered "excessive stresses into his hip joints all through all the years that he worked for the post office." She requested that appellant's claim be accepted for acceleration of degeneration of the bilateral hip joints, bilateral labral tears, and permanent aggravation of degeneration of the hip joint.

By decision dated December 17, 2020, OWCP denied modification of its prior decision.

On February 8, 2021 appellant requested reconsideration.

In a January 25, 2021 letter, Dr. Khulusi again noted her disagreement with OWCP's denial decision and alleged that she had provided sufficient medical rationale explaining how appellant's osteoarthritis developed "from progressive wear and tear on the job." She further explained: "[w]hen the femoral head is aspherical, that causes abnormal pressure to go into some particular spots and not to be distributed equally over the whole area of the sphere. That causes abnormal stresses in these particular spots and causes these excessive pressures and stresses to tear the labrum." Dr. Khulusi requested that appellant's claim be accepted for a bilateral hip condition.

By decision dated February 12, 2021, OWCP denied modification of its prior decision.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>5</sup> has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation of FECA,<sup>6</sup> that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.<sup>7</sup> These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>8</sup>

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit: (1) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; (2) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant.<sup>9</sup>

Causal relationship is a medical issue, and the medical evidence required to establish causal relationship is rationalized medical opinion evidence.<sup>10</sup> The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the

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<sup>5</sup> *Id.*

<sup>6</sup> *L.C.*, Docket No. 19-0724 (issued September 5, 2019); *S.B.*, Docket No. 17-1779 (issued February 7, 2018); *J.P.*, 59 ECAB 178 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

<sup>7</sup> *D.W.*, Docket No. 18-1139 (issued May 21, 2019); *J.M.*, Docket No. 17-0284 (issued February 7, 2018); *R.C.*, 59 ECAB 427 (2008); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

<sup>8</sup> *D.W., id.*; *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *L.M.*, Docket No. 13-1402 (issued February 7, 2014); *Delores C. Ellyett*, 41 ECAB 992 (1990).

<sup>9</sup> *S.C.*, Docket No. 18-1242 (issued March 13, 2019); *R.H.*, 59 ECAB 382 (2008).

<sup>10</sup> *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *T.H.*, 59 ECAB 388, 393 (2008); *Robert G. Morris*, 48 ECAB 238 (1996).

relationship between the diagnosed condition and specific employment factors identified by the employee.<sup>11</sup>

In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship therefore involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting condition.<sup>12</sup>

### ANALYSIS

The Board finds that this case is not in posture for decision.

In support of her claim, appellant submitted a series of reports dated February 3, 2017 through April 23, 2020 from Dr. Mittleman. Dr. Mittleman described appellant's employment duties as a letter carrier and noted that appellant had not performed mail delivery since June 2014. He noted that appellant was continuously standing and repetitively bending, twisting, reaching, and grabbing mail, lifting up to 70 pounds, mounting and dismounting his LLV, and ascending and descending stairs on his delivery route. Dr. Mittleman provided examination findings and diagnosed left hip labral tear, right hip labral tear, and acceleration of left and right hip osteoarthritis. He also noted that appellant had developed FAI and explained how the joint allowed for movement, which appellant performed at his job. Dr. Mittleman reported that, although appellant's hip bones had developed abnormally, "it has been the repetitive weight bearing forces sustained by [appellant's] hips when performing his duties as a rural route carrier" that contributed to his arthritic condition. He further described in detail how appellant's specific employment duties required him to be in a constant weight bearing position and placed significant forces on his hips. Dr. Mittleman concluded that appellant's repetitive employment duties, along with his underlying FAI condition, had permanently aggravated appellant's bilateral hip condition.

The Board finds that Dr. Mittleman provided a factual history confirming the accepted employment factors, and accurately noted appellant's history of injury and an affirmative opinion on causal relationship. The Board finds that, while Dr. Mittleman's reports are not fully rationalized, they are consistent in indicating that he sustained a medical condition due to the accepted factors of federal employment and are sufficient to require OWCP to further develop the medical evidence and the case record.<sup>13</sup> As such, his reports constitute substantial uncontradicted evidence in support of appellant's claim, and they also provide sufficient rationale to require further development of the record.<sup>14</sup>

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<sup>11</sup> *M.L.*, Docket No. 18-1605 (issued February 26, 2019); *M.V.*, Docket No. 18-0884 (issued December 28, 2018); *I.J.*, 59 ECAB 408 (2008); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013).

<sup>13</sup> *E.P.*, Docket No. 19-1703 (issued April 16, 2021); *G.M.*, Docket No. 19-0657 (issued September 13, 2019); *see also John J. Carlone*, 41 ECAB 354 (1989); *Horace Langhorne*, 29 ECAB 820 (1978).

<sup>14</sup> *R.A.*, Docket No. 19-0650 (issued January 15, 2020); *B.M.*, Docket No. 18-0448 (issued January 2, 2020); *E.G.*, Docket No. 19-1296 (issued December 18, 2019).

It is well established that proceedings under FECA are not adversarial in nature and while the claimant has the burden of proof to establish entitlement to compensation, OWCP shares responsibility in the development of the evidence to see that justice is done.<sup>15</sup>

The Board will, therefore, remand the case to OWCP for further development of the medical evidence. On remand OWCP shall refer appellant, a statement of accepted facts and the medical evidence of record to an appropriate Board-certified physician. The physician shall provide a rationalized opinion on whether the diagnosed conditions are causally related to the accepted employment incident. If the referral physician opines that the diagnosed conditions are not causally related to the accepted employment factors, he or she must explain with rationale how or why their opinion differs from that of appellant's treating physicians. Following this and any further development as deemed necessary, OWCP shall issue a *de novo* decision.

### **CONCLUSION**

The Board finds that this case is not in posture for decision.

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<sup>15</sup> C.W., Docket No. 19-0322 (issued July 18, 2019); S.W., Docket No. 18-0119 (issued October 5, 2018); *William J. Cantrell*, 34 ECAB 1233 (1993).

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 17, 2020 and February 12, 2021 merit decisions of the Office of Workers' Compensation Programs are set aside and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: January 5, 2022  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board